

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE:

EASTERN DIVISION

UNITED STATES MAGISTRATE JUDGES

Order No. 91-3

ORDER

I. ASSIGNMENT OF CIVIL CASE TO UNITED STATES MAGISTRATES JUDGES FOR THE CONDUCTING OF PRELIMINARY PRETRIAL CONFERENCES AND STATUS CONFERENCES AND FOR DECISIONS ON NON-DISPOSITIVE MOTIONS.

A. REFERENCE TO MAGISTRATE JUDGES

The Clerk of Court shall randomly assign all civil cases at the time they are filed to a District Judge and a Magistrate Judge. The Magistrate Judge to whom the case is assigned will conduct preliminary pretrials, status conferences, settlement conferences, sign orders of dismissal under Rule 41(a)(1), Fed. R. Civ. P. and conduct all post-judgment proceedings under Rule 69, Fed. R. Civ. P. The District Judge may at any time perform these duties instead of the Magistrate Judge.

B. PRELIMINARY PRETRIAL CONFERENCES, STATUS CONFERENCES AND SETTLEMENT CONFERENCES

The Magistrate Judge assigned to a case shall conduct preliminary pretrial, status, and settlement conferences. These conferences shall be conducted in accordance with L.R. 16.2 and the Court's General Order on Pretrial, Eastern Division Order No. 91-4.

Each Magistrate Judge conducting a pretrial, status, or settlement conference shall prepare and file a brief Order reporting the results of that conference.

**C. SCHEDULING ORDERS**

As required by Rule 16, Fed. R. Civ. P., the Magistrate Judge shall issue a scheduling order in every civil case within 120 days of the date the complaint is filed subject to the following exceptions. A scheduling order need not be issued where no defendant has filed an answer during the first 90 days following the filing of the complaint. In such cases, a scheduling order should be issued within 60 days of defendant's filing an answer.

If proof of service of the summons and complaint is not filed within 120 days after the complaint is filed, the Magistrate Judge shall issue an order requiring plaintiff to show cause why the defendant should not be dismissed pursuant to Rule 4(j), Fed. R. Civ. P.

If proof of service is filed within 120 days, but the defendant does not answer and no default is taken, the Magistrate Judge shall issue an order, after 180 days from the date the complaint was filed has passed, requiring plaintiff to show cause why the action should not be dismissed under Local Rule 55.1(b).

When a defendant responds to the complaint with a case-dispositive motion, the Magistrate Judge shall review the case file and determine whether discovery should proceed while the motion is pending. If so, a scheduling order for discovery should be issued. If not, the Magistrate Judge should set the case for preliminary pretrial within 60 days after the Court rules on the case-dispositive motion.

In cases filed *pro se* by incarcerated persons, the Magistrate Judge should issue a written pretrial order within nine (9) months after an answer is filed.

No scheduling orders need be issued in those classes of cases that have been exempted from the requirements of Rule 16(b), Fed. R. Civ. P., by Local Rule 16.2.

**D. NON-DISPOSITIVE MOTIONS**

The Magistrate Judges, in accordance with 28 U.S.C. §636(b)(1)(A), are authorized to hear and determine any pretrial motion pending before the Court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss, or for or opposing certification of a class. Non-dispositive pretrial motions include, but are not limited to, motions for (1) leave to proceed without prepayment of fees, (2) appointment, substitution, or withdrawal of counsel, (3) leave to plead, (4) amendment of pleadings, (5) extension of time, (6) a discovery order, (7) a more definite statement, and any other motion not expressly excepted by 28 U.S.C. §636(b)(1)(A).

**E. CASE DISPOSITIVE MOTIONS, NON-CONSENSUAL REFERENCES FOR TRIAL, AND SPECIAL MASTER PROCEEDINGS**

**1. Reference to Magistrate Judges**

The District Judge may, without consent of the parties, designate the Magistrate Judge to whom a case is assigned to serve as a special master pursuant to Rule 53, Fed. R. Civ. P., 28 U.S.C. §636(b)(2), 42 U.S.C. §2000e-5(f)(5), or any other statute or rule authorizing such appointment, and may refer any motion, application for post-trial relief made by an individual convicted of a criminal offense, or prisoner petition challenging conditions of confinement, to the Magistrate Judge for the conduct of any necessary evidentiary hearing, and the issuance of a report and recommendation, as

authorized by 28 U.S.C. §636(b)(1)(B).

**2. Conferences and Hearings**

Upon issuance of a written order referring a matter to a Magistrate Judge under section 1 above, the Magistrate Judge may schedule and conduct any meetings of counsel, conferences, or evidentiary hearings that the Magistrate Judge deems necessary. Unless otherwise ordered by the District Judge or Magistrate Judge, all evidentiary hearings shall be governed by the Federal Rules of Civil Procedure and the Federal Rules of Evidence. The Magistrate Judge may require the parties to file a pretrial or prehearing statement or order in whatever format the Magistrate Judge deems advisable.

**3. Masters' reports and reports and recommendations**

As soon as practicable after the conclusion of all proceedings, including evidentiary hearings, which are necessary to the submission of any matter referred to a Magistrate Judge under this section, the Magistrate Judge shall prepare and file with the Clerk a written Master's Report or Report and Recommendation. The Clerk shall serve a copy of the report on all parties.

The failure to object timely to a Magistrate Judge's report constitutes a waiver of any objection thereto, both for purposes of permitting the District Judge to adopt the Report and enter a decision or judgment thereon, and for purposes of appeal.

**F. APPEALS FROM AND OBJECTION TO MAGISTRATE JUDGES' DECISIONS**

**1. Calculation of time.** All time periods will be calculated in accordance with Rules 6(a) and (e), Fed. R. Civ. P. Any time period may be lengthened or shortened by a Magistrate Judge or District Judge.

2. Stipulated extensions of time. Unless otherwise ordered by the Court, the parties may stipulate to extend for a period of no more than 15 days the time for filing an objection or a response to an objection. The stipulation must be entered before the applicable time period has expired.

3. Motions for extensions of time. Any motion for an extension of time must be filed before the applicable time period has expired. Motions for an extension of time will be granted for good cause shown.

4. Hearing objections. Ordinarily objections will be ruled on without hearing. If a party wants a hearing, the phrase "REQUEST FOR HEARING" or the equivalent shall be endorsed on the caption for the objection or responsive brief and the ground(s) for the request shall be stated in the supporting brief. In the case of a Special Master's report, the Court will proceed under Rule 53(e), Fed. R. Civ. P.

5. Non-case dispositive orders. Objections to non-case dispositive orders must be filed in accordance with Rule 72(a), Fed. R. Civ. P. (Objections must be "served and filed within 10 days after entry of the order . . . .") Response(s) to the objection must be filed and served within ten (10) days of the service and filing of the objection. Any reply must be filed and served seven (7) days after the filing and service of the response. Under S.D. Ohio L.R. 72.4, the Magistrate Judge's decision remains in full force and effect unless and until stayed by the Magistrate Judge or the District Judge. Any request for a stay of a non-case dispositive order while an objection is pending on appeal must accompany the objection unless an earlier filing is required to allow the court to timely address the request.

6. Case-dispositive orders. Objections to case dispositive orders must be

filed and served in accordance with Rule 72(b), Fed. R. Civ. P. ("Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections . . . .") Response(s) to the objection must be filed within ten (10) days after being served with it. Any reply must be filed within seven (7) days of the filing and service of the response.

7. **Special Master's reports.** Appeals from a Magistrate Judge's special master's report are governed by Rule 53(e)(2), Fed. R. Civ. P. ("Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties.")

8. **Prisoner petitions and conditions of confinement trials.** Appeals from a Magistrate Judge's report and recommendation following evidentiary hearing on a prisoner's petition under 28 U.S.C. §§2254 or 2255 or a trial of a prisoner's petition challenging his conditions of confinement are governed by Rule 72(b), Fed. R. Civ. P. ("Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections. . . .") Response(s) to the objection must be filed within ten (10) days after being served with it. Any reply must be filed within seven (7) days of the filing and service of the response.

9. **Consent cases.** Appeals in consent cases under 28 U.S.C. §636(c) are governed by Rules 73 through 76, Fed. R. Civ. P.

10. **Record supporting objections.** Under Rule 53(e)(1), Fed. R. Civ. P., the Magistrate Judge must file a transcript with the Magistrate Judge's special master report. Under Rule 72(b), Fed. R. Civ. P., a party objecting to a Magistrate Judge's report and recommendation "shall promptly arrange for the transcription of the record, or portions of

it as all parties may agree upon or the Magistrate Judge deems sufficient unless the district judge otherwise directs."

## **II. ASSIGNMENT OF CERTAIN CRIMINAL MATTERS TO MAGISTRATE JUDGES**

Magistrate Judges may try misdemeanor cases as authorized by S.D. Ohio L.R. 72.1.

In accordance with the provisions of Rule 6(f), Fed. R. Crim. P., Magistrate Judges shall take the return of indictments by the Grand Jury. By reference from a District Judge, a Magistrate Judge may hear and determine any matter related to a Grand Jury proceeding. At the request of a District Judge, a Magistrate Judge may arraign a defendant charged by indictment or information with a felony or misdemeanor, take the defendant's not guilty plea, and establish a schedule for motions and trial.

## **III. ADDITIONAL DUTIES OF THE UNITED STATES MAGISTRATE JUDGES**

### **A. CIVIL PROCEEDINGS**

In any case assigned to a Magistrate Judge, the Magistrate Judge may perform any of the following duties:

- Conduct hearings and file a report and recommendation under 28 U.S.C. §636(b)(1)(B) for the disposition of a motion for pre-judgment attachment, replevin, or other similar pre-judgment remedy.
- Conduct hearings and file an Order under 28 U.S.C. §636(b) for the disposition of a motion for change of venue.
- Conduct hearings and file an Order under 28 U.S.C. §636(b) for the disposition of a motion to remand to state court.
- Conduct hearings and file a report and recommendation under 28 U.S.C. §636(b)(1)(B) for the disposition of motions to dismiss for want of personal jurisdiction.
- Issue writs of habeas corpus ad testificandum and ad prosequendum.

A District Judge may at any time dispose of these motions instead of the Magistrate Judge.

**B. MISCELLANEOUS PROCEEDINGS**

Magistrate Judge may perform any of the following duties:

- Conduct hearings and issue orders disposing of Rule 27, Fed. R. Civ. P. petitions to perpetuate testimony.
- Issue orders of entry to enforce IRS tax levies.
- Hold hearings and file reports and recommendations for the disposition of any action to quash or enforce an IRS summons.
- Issue administrative search warrants.
- Issue orders for pen registers or trap and trace devices under 18 U.S.C. §§3123 and 3127(2)(A), (3), (4).
- Issue warrants under the Rules of Admiralty Proceedings for the seizure of property subject to forfeiture.
- Release garnished monies to the garnishor when neither the garnishee nor the debtor has contested the garnishment.
- Issue orders for the release of monies or property posted as bond in civil and criminal cases and for the release of monies on deposit in the registry of the court.
- Grant motions to proceed without prepayment of fees.
- Grant or deny motions for leave to intervene.

This Order is not intended to restrict the authorized responsibilities of the Magistrate Judges, and the District Judges may jointly or separately assign such additional duties to the Magistrate Judges as are not inconsistent with the Constitution and law of the United States.

**IV. CONSENT TO DISPOSITION BEFORE A UNITED STATES MAGISTRATE JUDGE.**



**A. STATEMENT ABOUT CONSENT PRIOR TO PRELIMINARY PRETRIAL.**

At least three (3) days before the preliminary pretrial conference the Trial Attorney for each party shall file with the Clerk of Court and serve on the opposing party or parties a statement indicating whether that party has decided, as of that date, that the case will proceed before a District Judge or whether that party consents to disposition of the case by a Magistrate Judge. Consent to proceed before a Magistrate Judge does not waive the parties' right to a jury trial.

**B. REFERENCE TO MAGISTRATE JUDGE WHEN ALL PARTIES CONSENT**

When all parties consent, the Clerk of Court shall notify the District Judge assigned to the case. The District Judge will then issue an Order referring the case to the Magistrate Judge for disposition under 28 U.S.C. §636(c).

**C. APPEAL FROM JUDGMENT ENTERED BY MAGISTRATE JUDGE**

The appeal is to the United States Court of Appeals, unless all parties expressly consent to appeal to the District Judge assigned to the case. 28 U.S.C. §636(c)(3) and (4); Rule 73, Fed. R. Civ. P. Procedures on appeal to the District Judge are set out in Rules 74 through 76, Fed. R. Civ. P.

**D. ORAL ARGUMENT BEFORE DISTRICT JUDGE**

Where the appeal is to a District Judge and any party wants an oral argument, that party must file a request for oral argument supported by a brief statement of why oral argument would facilitate resolution of the issues presented on appeal. A District Judge may set any case for oral argument.

**E. VOLUNTARINESS**

The parties are free to withhold consent without adverse substantive

consequences. The Clerk of Court shall maintain any written communications from the parties regarding consent separate from the case file and shall not communicate any party's decision regarding consent to a District Judge or Magistrate Judge unless and until all parties to the case consent to disposition by a Magistrate Judge.

This Order supersedes Eastern Division order 85-4, which is of no further force and effect.

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IT IS SO ORDERED.

July , 1991

s/John D. Holschuh  
John D. Holschuh, Chief Judge  
United States District Court

s/James L. Graham  
James L. Graham, Judge  
United States District Court

s/George C. Smith  
George C. Smith, Judge  
United States District Court

s/Joseph P. Kinneary, Senior Judge  
United States District Court